IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CUSTOM APPEAL NO.26 OF 2005

Shyam Chaganlal Agarwal .. Appellant
V/s
The Commissioner of Customs (Import) .. Respondent

Mr.H.R.Shetty for the Appellant
Mr.R.V.Desai, Sr. Advocate with Mrs. Bharucha for the Respondent

CORAM: DR.S.RADHAKRISHNAN &
J.P.DEVADHAR, JJ.

DATE : 01.02.2006.

P.C.:

1. Heard the learned Counsel for the parties. By this appeal, the Appellant is seeking to raise an issue with regard to Tribunal confirming the penalty imposed on the Appellant. The finding recorded by the CESTAT indicates that the Appellant who is a qualified Chartered Accountant, had issued false certificates. It is also clearly recorded by the Tribunal that based on the aforesaid false certificates issued by the Appellant (Chartered Accountant) advance licenses were granted for duty free imports of goods. The false certificates issued by the Appellant has resulted in grant of licenses which would not have been otherwise issued and no duty free imports defrauding the Government's revenue would have taken place, but for such false certificates. The Tribunal has also observed that the Appellant had deliberatly issued false certificates, and that too different certificates for Income Tax and for DGFT/Customs, for the same period. Under those

circumstances the Tribunal had refused to interfere with the order of the Commissioner of Customs penalising the Appellant for his role in abetting evasion of duty in respect of imported goods.

2. Mr.Shetty the learned Counsel for the Appellant has relied upon the judgment of the Hon'ble Supreme Court in the case of **Hiralal Harilal Bhagwati Vs. CBI, New Delhi - 2003 (155) ELT 433 (SC)** and has submitted that his client has not violated any of the condition of a Notification No.204 of 1992, and hence he was not liable to pay any penalty under section 111 (o) of the Customs Act.

3. It is an admitted position that the Appellant had issued false certificates without verifying any records, which is apparent from his statement which is annexed at Exhibit-D to the petition. On the basis of the said false certificates the advance licenses were issued and on that basis the imports were allowed. Later, when it was discovered that the licenses were issued on the basis of these false certificates, the Commissioner of Customs imposed the penalty. The fact that the Commissioner of Customs of Calcutta exonerated the Appellant will not be of any assistance to the Appellant in this case. In fact, the cetificates issued by the Appellant, read as under :-

"I have examined the applicant firms actual imports and exports as given above and find them as correct."

4. Admittedly, the Appellant had not verified any of the records. He being a qualified Chartered Accountant, could not have issued such false certificates which resulted in issuance of advance licences for import and thereafter take up a plea that he was ignorant of the actual facts. We do not find any substance in this appeal. Appeal therefore stands dismissed.

(DR.S.RADHAKRISHNAN, J.)

(J.P.DEVADHAR, J.)